

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION**

| | | |
|---------------------------------|---|------------------|
| HOWARD K. SELZER and |) | |
| ARIEL SELZER |) | |
| Plaintiffs |) | |
| |) | |
| vs. |) | No. 4:17-cv-3175 |
| |) | |
| BLUE CROSS BLUE SHIELD OF TEXAS |) | |
| A DIVISION OF HEALTH CARE |) | |
| SERVICE CORPORATION, A MUTUAL |) | |
| LEGAL RESERVE COMPANY |) | |
| Defendant |) | |

APPENDIX TO NOTICE OF REMOVAL

Health Care Service Corporation, a Mutual Legal Reserve Company, operating in Texas through its division Blue Cross and Blue Shield of Texas (“BCBSTX” or “Defendant”), respectfully files the following Appendix to Notice of Removal.

- Exhibit 1: Citation in Case No. 17-DCV-244905; *Howard K. Selzer and Ariel Selzer v. Blue Cross Blue Shield of Texas*; In the 240th District Court, Fort Bend County, Texas, issued on September 15, 2017.
- Exhibit 2: Original Petition in Case No. 17-DCV-244905, filed September 14, 2017.
- Exhibit 3: Original Answer in Case No. 17-DCV-244905, filed October 16, 2017.
- Exhibit 4: List of all counsel of record.

Respectfully submitted,

By: /s/ Andrew F. MacRae
ANDREW F. MACRAE
State Bar No. 00784510
LEVATINO|PACE PLLC
1101 S. Capital of Texas Hwy
Building K, Suite 125
Austin, Texas 78746
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andrew@lpfirm.com

Attorneys for Defendant

SERVICE FEE NOT COLLECTED
BY DISTRICT CLERK THE STATE OF TEXAS

DELIVERED: 9/21/17
by: GC
Assured Civil Process Agency

CITATION

TO: BLUE CROSS AND BLUE SHIELD OF TEXAS
C/O CORPORATION SERVICE COMPANY
211 EAST 7TH STREET SUITE 620
AUSTIN TX 78701-3218

NOTICE:

You have been sued. You may employ an attorney. If you or your attorney do not file a written answer with the clerk who issued this citation by 10:00 a.m. on Monday next following the expiration of twenty days after you were served this citation and **PLAINTIFFS' ORIGINAL PETITION** filed on **September 14, 2017**, a default judgment may be taken against you.

The case is presently pending before the **240TH JUDICIAL DISTRICT COURT** of Fort Bend County sitting in Richmond, Texas. It bears cause number **17-DCV-244905** and is styled:

HOWARD K SELZER AND ARIEL SELZER VS BLUE CROSS AND BLUE SHIELD OF TEXAS, A DIVISION OF HEALTH CARE SERVICE CORPORATION

The name and address of the attorney for **PLAINTIFF** is:

JON MICHAEL SMITH
JON MICHAEL SMITH ATTORNEY
3305 NORTHLAND DR STE 500
AUSTIN TX 78731-4991
512-371-1006

The nature of the demands of said **PLAINTIFF** is shown by a true and correct copy of the **PLAINTIFFS' ORIGINAL PETITION** accompanying this citation and made a part hereof.

If this Citation is not served, it shall be returned unserved. Issued under my hand and seal of said Court, at Richmond, Texas, on this the **15th day of September, 2017**.

ANNIE REBECCA ELLIOTT, DISTRICT CLERK
FORT BEND COUNTY, TEXAS

Physical Address:

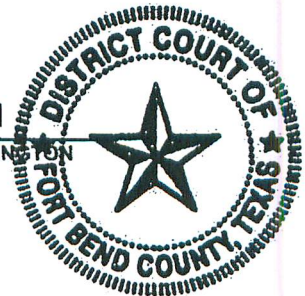
1422 Eugene Heimann Circle, Room 10142
Richmond, Texas 77469

Mailing Address:

301 Jackson Street
Richmond, Texas 77469



By: Brandy Worthington
Deputy District Clerk BRANDY R WORTHINGTON
Telephone: (281) 341-4502



SERVICE

Blumberg No. 5192

EXHIBIT

1

Filed
9/14/2017 10:02 AM
Annie Rebecca Elliott
District Clerk
Fort Bend County, Texas
Shelby Taylor

No. 17-DCV-244905

| | | |
|------------------------------------|---|--|
| HOWARD K. SELZER and ARIEL SELZER, | § | IN THE DISTRICT COURT OF |
| Plaintiffs | § | |
| | § | |
| v. | § | |
| | § | FORT BEND COUNTY, TEXAS |
| BLUE CROSS AND BLUE SHIELD OF | § | |
| TEXAS, A DIVISION OF HEALTH CARE | § | |
| SERVICE CORPORATION, | § | Fort Bend County - 240th Judicial District Court |
| Defendant | § | _____ JUDICIAL DISTRICT |

Plaintiffs' Original Petition

TO THE HONORABLE COURT:

Howard K. Selzer and Ariel Selzer, Plaintiffs, respectfully file this original petition complaining of Blue Cross and Blue Shield of Texas, a division of Health Care Service Corporation, ("Blue Cross") and would show:

I. Discovery Control Plan, Level 2

Pursuant to Texas Rule of Civil Procedure 190.3, this case is governed by Discovery Control Plan, Level 2.

II. Nature of the Case

Plaintiffs' claims arise from BCBS's failure to provide health insurance coverage as agreed and as paid for by Plaintiffs. Pursuant to Texas Rule of Civil Procedure 47, Plaintiffs state that they seek damages within the jurisdictional limits of this court, specifically monetary relief over \$200,000.00 but not more than \$1,000,000..

III. Parties

Plaintiffs are individuals residing in Fort Bend County, Texas.

Defendant, Blue Cross Blue Shield of Texas, a division of Health Care Service Corporation, is a foreign insurance company that is doing business in Texas and may be served with citation by and through its registered agent, Corporation Service Company, 211 East 7th Street, Suite 620, Austin, Texas 78701-3218.

IV. Venue

Venue is proper in Fort Bend County because all or a substantial part of the events or omissions giving rise to Plaintiff's claims occurred in Fort Bend County. Tex. Civ. Prac. & Rem. Code Ann. § 15.002(a)(1).

V. Conditions Precedent

All conditions precedent to recovery have been met or have occurred.

VI. Facts of the Case

The Selzers sought and acquired health insurance through BCBS. Between 2014 and 2016 Ariel Selzer required treatment at the Meninger Clinic, Life Skills South Florida and the Houston OCD program. BCBS denied coverage for the services provided at each of those facilities. The Selzers appealed each denial and BCBS denied each appeal.

VII. First Cause of Action: Breach of Contract

BCBS's actions amount to a breach of the contract between the Selzers and Blue Cross. The Selzers applied for and were accepted for insurance coverage by BCBS. They paid the required premiums, entering into a binding contract for insurance with Blue Cross. Blue Cross breached the contract by denying the above-referenced claims. The Selzers are entitled to recover their actual damages, court costs and reasonable and necessary attorney's fees pursuant to Texas Civil Practice & Remedies Code, Section 38.001, et seq.

VIII. Second Cause of Action: Texas Insurance Code Section 541.060

BCBS's actions as described above amount to Unfair Settlement Practices as defined by Texas Insurance Code, Section 541.060. Specifically, BCBS has misrepresented facts and policy provisions and has failed to attempt in good faith to settle claims on which liability has become clear. BCBS's violations have been a producing cause of damages to Plaintiffs. Because BCBS has acted knowingly, Plaintiffs are entitled to an additional award of three times their actual damages. Texas Insurance Code, Section 541.152(b). They are also entitled to their reasonable and necessary attorney's fees.

IX. Third Cause of Action: Texas Insurance Code Sections 542.051-061

BCBS's actions also amount to a violation of Texas Insurance Code, Sections 542.051-061. As such, Plaintiffs are entitled to 18% per annum in addition to the amount of their claim, plus attorneys' fees.

X. Jury Demand

Plaintiffs have requested that this case be decided by a jury as allowed by Tex. R. Civ. P.

216. The appropriate jury fee has been paid.

XI. Prayer

Plaintiffs pray that upon final trial of this case they have judgment against Defendant for actual damages, an additional three times their actual damages, reasonable and necessary attorney's fees, pre-judgment and post-judgment interest, costs of court, the declarations set forth above and such other relief to which Plaintiffs may show themselves justly entitled.

Respectfully submitted,

/s/ Jon Smith
JON MICHAEL SMITH
State Bar No. 18630750
3305 Northland Drive
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Austin, Texas 78731
512/371-1006
512/476-6685 fax
jon@jonmichaelsmith.com

CAUSE NO. 17-DCV-244905

HOWARD K. SELZER and ARIEL
SELZER,

Plaintiffs,

v.

BLUE CROSS BLUE SHIELD OF
TEXAS, A DIVISION OF HEALTH
CARE SERVICE CORPORATION,

Defendant.

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§
§
§
§
§
§

IN THE DISTRICT COURT

FORT BEND COUNTY, TEXAS

240TH JUDICIAL DISTRICT

ORIGINAL ANSWER

Defendant Health Care Service Corporation, a Mutual Legal Reserve Company, operating in Texas through its division Blue Cross and Blue Shield of Texas ("Defendant"), files this Original Answer.

Defendant denies each and every, all and singular, the material allegations contained in the Plaintiffs' Original Petition and demands strict proof by a preponderance of the evidence. This constitutes a general denial pursuant to Rule 92 of the TEXAS RULES OF CIVIL PROCEDURE.

WHEREFORE, PREMISES CONSIDERED, Defendant requests that Plaintiffs take nothing by this lawsuit and Defendant recover its costs. Defendant further requests such other relief, both legal and equitable, to which it may show itself justly entitled.

Respectfully submitted,

By: /s/ Andrew F. MacRae
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Attorney for Defendant
Health Care Service Corporation, a Mutual
Legal Reserve Company, operating in Texas
through its division Blue Cross and Blue Shield
of Texas

CERTIFICATE OF SERVICE

I hereby certify that I forwarded a true and correct copy of this Original Answer on October 16, 2017, via e-mail and/or electronic filing, to the following counsel of record:

Jon Michael Smith
3305 Northland Drive
Suite 500
Austin, Texas 78731

/s/ Andrew F. MacRae
Andrew F. MacRae

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FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION**

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| LEGAL RESERVE COMPANY |) | |
| Defendant |) | |

LIST OF ALL COUNSEL OF RECORD

Plaintiff's Counsel:

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Defendant's Counsel:

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